

Letter of Findings Number: 04-20110477
Use Tax
For Tax Year 2008

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ISSUE

I. Use Tax—Tractor and Scraper.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-1; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-4](#).

Taxpayer protests the assessment of use tax on a tractor and a scraper.

STATEMENT OF FACTS

Taxpayer operates an Indiana excavating business and a farm. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax on the rental and purchase of a tractor and a scraper purchased in the tax year 2008. Taxpayer protests the proposed assessment of use tax on its purchase of the tractor and scraper. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax— Tractor and Scraper.

DISCUSSION

Taxpayer protests the imposition of use tax on the rental and subsequent purchase of a tractor and a scraper. Initially, Taxpayer rented the tractor and scraper, but later purchased the two items from the rental company. Taxpayer protests that the tractor and the scraper were used in an exempt manner. During the administrative hearing, the Hearing Officer explained that the agricultural exemption applied to tangible personal property directly used in the direct production of a crop or livestock. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. The Department determined that Taxpayer had not paid sales tax on some taxable purchases and so imposed Indiana use tax on those purchases.

At hearing, Taxpayer explained that he owns both the excavating business and a farm, and that the tractor and scraper were used on the farm for installing drainage ditches. Also, the tractor was used to till fields for crops on the farm. Since Taxpayer is the excavating business and since the farm is a distinct and separate entity, the use of the tractor and scraper to install drainage ditches on the farm constituted taxable uses. However, the tilling of fields for crops on the farm constituted use by the farm as opposed to use by the excavating company. Therefore, Taxpayer as a retail merchant should have collected sales tax from the farm on the rental of the tractor by the farm, as provided by IC § 6-2.5-2-1(b).

However, the use of the tractor by the farm requires a review of the agricultural exemptions. The relevant statutes regarding agricultural exemptions are IC § 6-2.5-5-1 and IC § 6-2.5-5-2. IC § 6-2.5-5-1 states:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and

(2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

IC § 6-2.5-5-2 states:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

(1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;

(2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and

(3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

Also of relevance is [45 IAC 2.2-5-4](#), which states in relevant part:

...

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.

Garden and lawn equipment, parts, and supplies.

Electricity for lighting and other non-agricultural use.

Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.

Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.

Pumps.

All saws.

All tools, including forks, shovels, hoes, welders, power tools, and hand tools.

Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.

Plumbing, electrical supplies, and accessories, pumps.

Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.

Food for non-exempt horses, ponies, etc.

Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.

Field tile or culverts.

Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste). Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

(1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.

(2) Feed and medicines sold for livestock and poultry described in Item (1).

(3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.

(4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.

(5) Milking machines, filters, strainers, and aerators.

(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.

(7) Grease and repair parts necessary for the servicing of exempt equipment.

(8) Containers used to package farm products for sale.

(9) Equipment designed to haul animal waste.

(10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect

on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

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(Emphasis added).

After the administrative hearing, Taxpayer provided documentation and analysis in support of its claim that the tractor was used in both exempt and taxable circumstances in the tax year at issue. The tractor was used to till land for crops on the farm and to create drainage ditches. The tractor was used a total of approximately 250 hours in 2010. 225 hours of use were for tilling ground, which qualifies as an exempt activity. 25 hours of use were for creating drainage on the farm. This results in an exempt use ninety (90) percent of the time and a taxable use ten (10) percent of the time. Therefore, the Department will recalculate the amount of use tax due by applying the use tax rate to ten percent of the purchase price of the tractor.

Regarding the scraper, it is not used in an exempt manner at all. It literally scrapes surface material for removal or relocation from its original site. This does not qualify for the agricultural exemption since it is not directly used in the direct production of a crop or livestock, as required by IC § 6-2.5-5-1 and IC § 6-2.5-5-2.

In conclusion, Taxpayer was not required to charge sales tax on the rental of the tractor to the farm, since that use qualified for the agricultural exemptions found at IC § 6-2.5-5-1 and IC § 6-2.5-5-2. Taxpayer's ten percent (by hours of usage) use of the tractor for installation of drainage ditches was a taxable use, and use tax is properly due on ten percent of the purchase price of the tractor. Use tax is properly due on the total purchase price of the scraper, since it was not used in an exempt manner at all. The Department will recalculate the amount of use tax, penalty, and interest due and will issue a new bill.

FINDING

Taxpayer's protest is sustained in part and denied in part, as described above.

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